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Submitted by:

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Box 3501, Station C,
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October 10, 1963.

The Ontario Committee on Taxation,
Toronto, Ont.

Gentlemen:

Submission regarding The Ontario Retail Sales Tax Act

1. Purpose

In this submission I shall endeavour to treat with the following areas which have been designated to be of interest to the Committee, viz.

(a) the existence of particular anomalies and inequities; and
(b) problems of simplicity, clarity and efficiency.

These matters are dealt with by sections, as follows:-

Section	Anomalies and inequities
2.	Anomaly in the name of this tax
3.	Anomaly in the imposition of Ontario Tax on sales to departments of the Ontario Government
4.	Inequity against the wholesale industry.
	Simplicity, clarity and efficiency
5.	Tax adjustments by internal accounting entries by holders of a vendor permit
6.	Rulings and Regulations
7.	Is it mandatory to list the relevant vendor's permit number on each and every invoice without tax added covering goods purchased from wholesalers for purpose of resale.
8.	Tax on crown corporations.

2. Anomaly in the name of this tax

2.1 The particular anomaly is the inclusion of the word "retail" in the name of the Act, which, in Bill 107, was introduced as "an Act to impose a Tax on Retail Sales".

2.2 For reasons which follow: I submit that some of the inequities, and also many of the problems of simplicity and efficiency, arose because of the anomaly of having described the tax as a tax on retail sales; whereas, in fact, it was a tax on consumers, imposed on purchases by consumers at all levels of distribution, viz., manufacturing, wholesaling, and retailing. (Sections 1.8 and 2 of the Act.)

2.3 In support of this contention I quote verbatim from a letter written to me on Oct. 30/61 by Mr. Philip T. Clark, Comptroller of Revenue; viz.

> "The present Retail Sales Tax Act of Ontario should perhaps have been called the Consumer Purchase Tax Act because whether the purchase is made by a Purchaser from a retailer in Ontario, or whether the Ontario purchaser imports the goods for use in Ontario, that purchaser is taxable under this Act.

2.4 The attention of the Committee is called to the fact that Mr. Clark, the civil servant mainly responsible for the rules and regulations under which the Act is administered, referred only to purchases "from a retailer", thus omitting and/or ignoring two other major sources of tax revenue, viz. sales to consumers by wholesalers, and sales to consumers by manufacturers. As will be discussed hereinafter, lack of consideration by the administrators of the Act of the legitimate needs of wholesalers has spawned many problems connected with simplicity, clarity and efficiency.

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2.5 Recommendation

(a) To help overcome the inertia created by the use over the past two years of an improper name, and in order to facilitate the gradual application of measures to remedy the resultant deficiencies with respect to simplicity and efficiency: I recommend that the name of the act be changed to "The Ontario Sales Tax on Consumers."

(b) Any proposal to change the name of an act is bound to be received with horror by the administrators and legislators; but that should not deter the making of a change which is logical and advantageous.

(c) One of the advantages is that it will facilitate the adoption and use of the abbreviation O.S.T. for this tax; which will both correspond with, yet adequately differentiate from, the commonly used abbreviation F.S.T. for the federal sales tax.

3. Anomaly in the imposition of Ontario tax on sales to departments of the Ontario Government

3.1 What possible public good, (assuming that it is not a public good to create needless work for auditors and other civil servants), can come from one government department collecting tax from another department of the same government—from taking money out of one pocket to be put into another pocket?

3.2 Ontario Departments are exempt from federal sales tax; but are supposed to pay Ontario sales tax. This disparity has within it the seeds of many vexatious petty problems for federally unlicensed wholesalers: because each invoice to an Ontario Department must first have a deduction for F.S.T. exemption applied to the normal sale price and then, in contrast, have O.R.S.T. added.

3.3 The omission of even 5¢ O.R.S.T. from an invoice against an Ontario Department inevitably results in correspondence and error correcting paperwork procedures costing $5.00. This is a common occurrence. Apparently, Ontario Departments, in contrast with other consumers, have not been instructed to account for O.R.S.T. by internal entries in the event that it is overlooked by suppliers.

3.4 Recommendation

(a) Consequently, I recommend that all Ontario Departments be ruled as exempt from O.R.S.T. This ruling would sweep away a great deal of nonsense; and lessen the cost of paperwork processing and auditing for the Government as well as for its suppliers.

(b) If this be impracticable, for some obscure reason, surely it would be in the interests of simplicity and efficiency to instruct all departments to account by their own internal accounting entries for tax omitted inadvertently by suppliers. This is what holders of a vendor's permit are supposed to do. Why cannot the Government apply its own rules to its own departments?

4. Inequity against the Wholesale Industry

4.1 (a) My employer was incorporated under the Dominion Companies Act in 1915 as a wholesaler of automotive replacement parts; garage and service station tools, equipment and supplies; automobile and household paints, chemicals, and supplies; car body refinishing supplies industrial tools, equipment, and supplies; commercial refrigeration parts and supplies; refrigerant gases; T.V. and electronic tubes and replacement parts; air conditioners, major household appliances, garden equipment; radio, hi-fi, and TV sets; and traffic appliances.

(b) Practically everything we handle could be purchased for either resale or consumption by retailers; and for either use in production or consumption by manufacturers and mines.

(c) Our inventory consists of about 35,000 items valued at $2,500,000 at wholesale selling prices. In June 1963, we issued over 45,000 sales slips in multi-copies; and on average monthly sales of $500,000 we collect Ontario Sales Tax of 9/10ths, of 1%. We have about 5500 accounts on our books.

4.2 The principal inequity against the wholesale industry under the so-called "Retail Sales Tax Act" is the burden of administrative detail connected with the segregation of "consumable" items from "resale" items. This is particularly difficult in the automotive wholesale trade because of the number of lines carried and the diversity of uses to which they may be put. Experience has proven that about 25% of my company's sales is taxable; leaving 75% as resale items not subject to the consumer tax. Here is a veritable case of the tail wagging the dog.

4.3 In this connection, may I remind the Committee that in the areas of federal income and sales taxes the chief burden of administration, and the source of the main body of rules and regulations, and also of the relative jurisprudence, is concerned with exemptions and avoidances rather than with the taxes per se.

4.4 (a) Original ruling 4(2) page 39 of O.R.S.T. booklet "Rules and Regulations" reads as follows:-

> "In practice, virtually all wholesalers will make some sales at retail---. Every wholesaler must collect tax on such sales in the same fashion as any other vendor selling at retail---. Where it is obvious that a purchaser who holds a vendor's permit is purchasing taxable items for taxable purposes, the vendor------should refuse to accept a Purchase Exemption Certificate from the purchaser thereof."

(b) The administrative difficulty here is that what may appear "obvious" to the casual observer may turn out, upon investigation, to be not a fact. Take, for example, an invoice to a service station or body repair shop for 2 quarts of car paint. This would appear to be a consumable item on which tax should be added. However, if the purchaser intended to use the paint to touch-up a used car for re-sale, the paint could be purchased free of tax under an appropriate P.E.C.

(c) Similarly, the invoice for a gasoline powered lawn-mower purchased by a service station may look like a "consumable" item; but turns out to be a "resale" item; or an electric hand tool purchased by an appliance store may look like a "consumable" item; but also turns out to be a "resale" item.

(d) Cotter-pins, lock-washers, machine screws, bolts and nuts, body fasteners, and abrasives, are examples of goods considered generally to be "consumables". However, some customers insist that their blanket P.E.C. for "automotive parts, accessories, & supplies" covers all such items; and usually (but not always refuse to pay any tax added inadvertently to invoices. We do not argue the point: but, since such customers are exceptions to the general run, they add to the over-all problems of exceptions; and make the cost of "not collecting" the tax greater than the cost of collecting it.

(e) The attendant difficulty is that, in the wholesale industry, the majority of such sales are consummated verbally between clerks and shop-workers who know nothing, and care less, about the intricacies of the Ontario Retail Sales Tax Act; and, I think it should be said here, there is no good reason why they should know or care. Surely it is the responsibility of tax collectors, in a democratic society, to devise their tax gathering schemes so that clerks and workers should not have to be concerned with the intricacies of tax regulations.

4.5 Recommendation

(a) I recommend that the administrative authorities issue an unequivocal regulation by which every holder of a vendor's permit who issues a blanket P.E.C. to a regular supplier could thenceforth buy anything and everything free of tax from that supplier--as is done now by holders of "G" permits.

(b) In the light of the severe restrictions surrounding the issue of a "G" permit (regulation 6.5), I expect that this recommendation will be received by the tax administrators with howls of anguish and forecasts of dire ruin. However, I submit that there are firm grounds and ample statistics to support my contention that a substantial majority of permit holders can be trusted to do the right thing; particularly if they know that their cash disbursements and accounts payable will be audited regularly by government auditors.

4.5 Recommendation (Cont'd.)

(c) My proposal will be found, upon careful consideration of all the facts, to be less drastic than it may appear at first sight; because, in practice, a perspicacious permit holder can accomplish this result now by giving his suppliers a blanket P.E.C. for "miscellaneous merchandise." Such a P.E.C., according to a letter written to me by Mr. Philip T. Clark, Comptroller of the Treasury, On October 11, 1961, will enable the permit holder to buy anything and everything without tax. Therefore, such an ordinary permit holder could thereby put himself in exactly the same position as the holder of a "G" permit. Under these circumstances, why not make the situation respectable and above-board by a regulation to that effect?

(d) The immediate effect of such a regulation would be to free wholesalers and manufacturers from their present enforced role of frequently having to try to be an arbiter of what is taxable and what is not; or of scrutinizing P.E.C's. for other than "miscellaneous merchandise" to see whether or not they embrace all of the goods being bought from time-to-time by the permit holders; and it would put an end to the endless decisions which wholesalers' clerks have to make daily as to whether to add tax or not add tax. In theory, these decisions should be made by the purchasers; but in practice they are made by the wholesalers' clerks; and no amount of theoretical discussion by the tax administrators will change this inescapable fact.

(e) Another practical and immediate effect of such a ruling would be to completely eliminate scores of minor but costly correcting entries and adjustments which have to be made each month by wholesalers in the accounts of retailers who claim that Ontario tax was charged improperly on goods bought for resale. (See section 5-3 regarding conflicting regulations about refunds.)

(f) The adoption of this proposal would result in an immediate economy to the Province because commission is not paid to vendors on that portion of their remittances covering tax owed on goods purchased tax free but used or consumed under taxable circumstances.

5. Tax adjustments by internal accounting entries by holders of a vendor's permit

5.1 In part VI, Accounting Procedure, page 12, section 4 of the booklet "Rules & Regulations", there is this question and answer:

> "Q. - May a vendor take credit for goods on which he paid tax to his supplier, but which he then resold to someone else?
>
> A. - Yes. If the vendor —— paid tax when he purchased the goods—— he may deduct the tax paid to his supplier from the tax he collects from the ultimate purchaser.———".

5.2 IN CONTRAST, Regulation 3, section 6, page 20, reads as follows:-

> "A vendor who has paid tax —— and who resells it —— may apply for a refund —— upon production of evidence satisfactory to the Comptroller in the form provided for such purpose."

5.3 Naturally enough, merchants are inhibited by the red-tape of having to apply to Toronto for a refund; and they rightly see no reason to pay the tax and then sit back to wait for some government minion to set in motion the cumbersome machinery for refund. Consequently, the procedure most commonly used by retailers charged O.R.S.T. in error on goods purchased for resale is just to ignore the tax—just to pay the invoice less the tax— and to say nothing. A frequent, but less common, procedure is to return the invoice for correction. Either way, a great deal of extra work, and a great many problems, are created thereby for wholesalers—costs which have nothing directly to do with "collecting" tax; but rather with "not collecting" the tax.

5.4 Recommendation

Part VI, section 4, would appear to give a commonsense, practicable, solution to the problem; but what is Part VI, section 4? Is it a ruling, or a regulation, or what; and why was it ignored and contraried by regulation 3? I recommend that Part VI, section 4 be re-issued as a regulation in unequivocal terms.

6.1 Rulings and Regulations

Why was the administration of the Act confused and muddled by a set of Rules plus a set of Regulations, so that we have to try to cope with Rulings and Regulations instead of plain regulations?

6.2 Recommendation

I recommend that the rules be withdrawn and embodied in the Regulations; and that thenceforth there be simply one set of "Regulations under the Act."

7. Is it mandatory to list the relevant vendor's permit number on each and every invoice without tax added covering goods sold by wholesalers for re-sale?

7.1 A great deal of confusion, argument, and uncertainty, has existed on this question since Sept. 1/61, and it still remains unsettled as of to-day. The story is unfolded below in sections 7.2 through 7.7. The reasons why this is a vitally important question to wholesalers are explained in sections 7.8 et seqq.

7.2 (a) In reply to a specific question, the Director of the Retail Sales Tax Branch wrote to me on Sept. 7/61 to say that it was mandatory to write the relevant 8 digit permit number on all such invoices without tax added. He also said (I assume that he is an incurable optimist):-

> "In the beginning this will be an onerous task; however as time goes on and each vendor becomes familiar with his number it will become a simple matter to mark it on each and every invoice covering purchases of tangible personal property purchased by the customer for resale."

(b) Because 75% or more of our invoices cover goods purchased for re-sale; it would be an intolerable burden for us to attempt to comply with such an instruction; and I replied that I would not attempt to do so unless he gave me the rule or regulation by which he thought it was made mandatory. A reply was not received.

7.3 (a) On Sept. 28/61 the Office Manager of Champion Spark Plug Co. of Canada Ltd., Windsor, Ont., wrote to me to say that he had attended a meeting in Toronto during the preceding week, held under the auspices of the Canadian Manufacturers' Association, for the purpose of hearing Mr. Philip T. Clark expound the Retail Sales Tax Act.

(b) In the questions and answers period which followed Mr. Clark's address (these meetings were a unique feature of the introduction of a Retail Sales Tax in Ontario) the Comptroller of the Treasury replied in the negative to the direct question: "Is it mandatory to list a purchaser's vendor's permit number on his purchase order?" (This was a question about purchase order rather than invoice—but I submit that whatever principle is at issue should govern both invoices and purchase orders).

7.4 On Oct. 10/61 the General & Tax Accounting Section of the Corporate Department-Head Office- of Canadian General Electric Co. Ltd. issued a bulletin to circulate the following information:-

> "We have been advised by the Ont. Retail Sales Tax Branch that it is not compulsory to show the customer's permit number on the requisition, invoice, or credit note, covering tax exempt sales. However, it is necessary to make some indication on these documents that the sale was made on an exempt basis. Therefore, in order to save typing time, it is suggested that the letters "EX" be shown in the "Provincial License" block on the requisition, sales invoice, or credit note."

7.5 (a) On March 26/62 I wrote to Mr. Clark as follows:-

> "The "Report of the 1961 Canadian Tax Foundation Conference" carries the following verbatim exchange between you and a questioner:-
>
> Q. I understand from what you say that you expect the customer's registration number on each purchase invoice——.
>
> A. Yes.

> Q. In other words, on telephoned orders the supplier would be obligated to write this number on each order. Is that the implication?
>
> A. Yes. I don't know whether I am being too strict about this, but it seems to me that if we have this provision, we should use it. Under the Excise Tax Act I have seen stamp after stamp put on purchase orders to get exemption. It is done in that case and this is simply a continuation of that idea."

"In connection with your reference to practices under the federal act, I bring to your attention that the rubber stamp impressions to which you referred are stamped by the purchaser on his purchase orders. The seller does not have to stamp his invoices or write any number on them. The situation vis-a-vis the seller's invoices is very definitely not as you implied in your answer to the question."

7.5 (b) Mr. Clark's reply of March 29.62 was non-committal, and mostly irrelevant, as follows:-

> "It is the responsibility of the purchaser to supply the vendor with purchase exemption certificates if the purchaser wishes to buy tangible personal property free of tax and if the purchaser does not submit to the vendor of tangible personal property properly completed purchase exemption certificates as required by these Regulations, the vendor has an alternative: he can charge tax to the purchaser because he has not certified that he is buying the material for a non-taxable purpose.
>
> If, on the other hand, the purchaser gives the vendor purchase exemptioncertificates or evidence that the certificate is covered by a blanket certificate which the vendor has on file, then the vendor is excused from collecting tax from the purchaser. There is no difference between this kind of requirement and that which applies under the Excise Tax Act."

(c) Mr. Clark chose to ignore completely the fact that he had replied to a question about a seller's invoice by talking about what a purchaser did with his purchase order—two completely irrelevant things in the sense under discussion.

7.6 On April 11/63 the District Tax Administrator in Sudbury wrote to our company's affiliate in Sault Ste. Marie as follows:-

> "It cannot be too highly stressed that complete compliance with regulations 4 and 5 is in the best interest of your Company especially the obtaining of the proper purchase exemption certificates and the proper application of the number on all purchase order invoices where the items shipped are not covered by a regular purchase order from the purchaser."

The meaning of the expression "purchase order invoice" is a mystery to me; but there is no mystery about the tune being played, because it is the same discordant tune as was being played in September 1961.

7.7 (a) As explained in section 4.1(c) above, the clerks in our company write 45,000 invoices a month. 75% of these do not have tax added. About 90% cover sales made as a result of verbal orders, mostly between our sales personnel and employees of our customers. Written requisitions and/or purchase orders are the paraphernalia of big business. They are not used, as was wrongfully assumed by the tax administrators, by the majority of retailers who buy from our firm for resale.

(b) Therefore, few, if any, of the persons who do the actual "Buying" from us know, or care to know, the relevant 8 digit vendor's permit number. We, ourselves, have been issued with 11 different vendor's vermits; and I assure the Committee that I cannot quote any of them. As I said in section 4.4(c) above: surely it is the responsibility of tax collectors, in a democratic society, to devise their tax gathering schemes so that clerks and workersshould not have to be concerned with the intricacies of tax regulations?

[illegible]

[illegible]

[illegible]

7.5 [illegible]

[illegible], the vendor has [illegible] because it has not [illegible]

[illegible] certificate is covered by a [illegible] on file, then the vendor is [illegible] customer. There is no differ- [illegible] and that about sums up the [illegible]

(c) [illegible] seems to ignore completely the fact that he had replied to a [illegible] invoice by talking about such a purchaser the [illegible]

7.6 [illegible]

[illegible] the proper purchase exemption certificate and the [illegible] of the vendor on his purchase order invoice [illegible]

The meaning of the expression "purchase order invoice" is a mystery, to say [illegible] there is no mystery about the game being played, because it is the same discordant tune as was being played in September 1961.

7.7 (a) As explained in section 4.1(c) above, the clerks in our company write 15,000 [illegible] lot of verbal orders, mostly between our sales personnel and employ- [illegible] customers. Neither requisitions and/or purchase orders are the per- [illegible]

(b) Therefore, few, if any, of the persons who do the actual "buying" from us [illegible] any of them. As I said in section 4.1(c) above, merely it [illegible] tax collectors, in a democratic society, to devise their [illegible] gathering scheme so that clerks in stores should not have to be concerned with the intricacies of tax regulations.

7.7 (c) If it were a fact that it is mandatory for wholesalers to write the relevant 8 digit vendor's permit number on each and every invoice without tax added: IT WOULD INVOLVE SEVERAL MILLIONS OF TRANSACTIONS PER MONTH, based on the fact that our small company alone issues about 32,000 without tax added invoices each month. However, the task of writing the number on each invoice is inconsequential as compared with the task of "ascertaining" the number. As explained previously, retailers cannot quote their 8 digit number, and, even if they did, what percentage would be correct?

(d) Regulation 4.6 issued Feb. 1962 deals with orders for goods for re-sale telephoned to suppliers who have been given a blanket P.E.C. from the purchaser. The author of this section appears to haveassumed that it is a simple matter for the supplier to obtain from the purchaser the relevant 8 digit code number. In fact: it is not a simple matter. In fact: each wholesaler would be forced to provide some system by which his clerks could quickly ascertain the number. Competition and common sense would force this; because wholesalers know from experience gained since Sept. 1961 that retailers have not the capacity, or the desire, to do the necessary. Therefore, since the majority of wholesalers cannot afford the luxury of electronic data processing equipment, the major burden would be how to make the 8 digit permit number immediately available to a score or more of clerks located at widely dispersed customer contact points throughout their premises.

7.8 (a) With reference to Mr. Clark's repeated references to procedures concerned with the federal government's regulations anent the Excise Tax Act: I submit that comparisons with the Ontario Retail Sales Tax Act are irrelevant and inappropriate.

(b) To begin with, the legal situations are opposite, because in the case of the federal act goods attract tax at the manufacturer's level; and when a manufacturer applies for tax exemption on any particular purchase of goods; he is relying on ministerial discretion to grant it. In contrast, under the Ontario Act there is notax on goods purchased for resale; and there is no ministerial or administrative power to tax such goods, notwithstanding the legislative authority given to the Treasury to issue administrative regulations. I submit that sections 1.8 and 2 of the Act make this abundantly clear. Thus there is a very fundamental difference in the basic situations.

(c) To end with, the majority of small retailers with whom wholesalers deal do not employ personnel with the training and experience to cope with the paraphernalia of big business--the purchase orders, requisitions, 8 digit registration numbers, applications for refunds, letters, and forms, etc. which threaten to suffocate us all. Tax administrators should recognize, appreciate, sympathize with, and allow for, the vast gulf which separates and distinguishes the sophistication of big business from the naivete of the majority of sole proprietors. Regretfully, I must say that little evidence of these qualities of mercy are apparent to those of us who have to read, and try to be guided by, the rules, regulations, admonitions, and administrative orders, issued by the majority of tax administrators.

7.9 Recommendation

(a) There is urgent need for chaos to be brought into order; and for simplicity, clarity and efficiency, to replace confusion, obfuscation, and argument.

(b) I recommend, therefore, that a new regulation be issued to cover seller's invoices and to specify:

WHAT reference to a blanket P.E.C. is to be made if O.S.T. is not added or single P.E.C. is not attached;
HOW that reference is to be written, stamped, printed, or otherwise indicated,
WHEN it is to be done.

This regulation also should cover credit notes for goods returned for credit on which tax was paid when sold.

(c) I also recommend that the regulation make crystal clear that it is not mandatory for wholesalers to list on their invoices the vendor's permit number of a customer who has filed a blanket P.E.C. for miscellaneous merchandise, or an equivalent description of goods. (I recognize that this may not present a problem to a few wholesalers who use electronic data processing equipment.)

(d) I also recommend that one acceptable form of reference to a blanket P.E.C. be specified as a rubber-stamp impression, on the seller's file copy of the invoices without tax added and/or credit notes with tax added, along the following lines "Ont. Sales Tax Exempt Blanket PEC on file or single PEC attached."

8. Tax on Crown Corporations

8.1 Ruling 16.15 purported to impose O.R.S.T. on purchases by Federal & Provincial Crown Corporations. However, a list of such Corporations, or alleged corporations, was not published; and has not been published up to the present.

8.2 Our company makes scores of sales each month to the National Research Council and the Atomic Energy of Canada Ltd. Both agencies refused to pay Ontario Tax. In contrast, the Canadian Broadcasting Corporation was granted a "G" vender's permit.

8.3 Ruling 20.3 stipulates that if a purchaser refuses to pay tax at the time a sale is made: the seller should have the purchaser sign a brief statement and then proceed as follows if he wishes to escape responsibility for the unpaid tax, viz←

> "——submitting to the Comptroller of Revenue within 10 days, a written statement containing the date of sale, other details of the sale, the name and address of the purchaser, the amount of tax owing, and the statement of refusal signed by the purchaser and witnessed by the seller."

8.4 Nothing is provided for repeated infractions; nothing is said about minimum amounts. A seller may prefer to absorb the loss of the tax on one sale of $10; but this obviously cannot be continued if a crown corporation is a regular customer.

8.5 Recommendation

It is obvious that ruling 20.3 cannot be followed in the case of corporations such as the National Research Council and Atomic Energy; and I recommend that the administrative authorities face the issue squarely and issue whatever is necessary to regularize the situation as it exists rather than as they might like to see it.